1947.

File No. Abk II/47
pt I

Legal Department

B. **BRANCH**

Subject:— Rules and Notifications

Under the Bombay Abkari Act

1818.

For Subsequent Papers pl. see

pt II

File No. Abk II/47 &
Gen. No. pt I

QE-B

Office of the R.L.A.

The draft notification at page 5 as slightly amended is in order.

2. Under section 14B(1) of Bombay Abkari Act 1878, no person etc. shall have in his possession any quantity of any intoxicant etc. in excess of such limit as the Provincial Government under section 17 may declare to be the limit of retail sale, except under a permit from the Collector. The proposed permit at pages 11-15 is therefore intra vires section 14B(1) of the Bombay Abkari Act, 1878, because possession of the foreign liquor in excess of the prescribed limit, without a permit would amount to contravention of the said section 14B(1). The said section 14B(1) does not authorise the imposition of any conditions to the permit but these conditions can be imposed under section 30 of the Bombay Abkari Act, 1878, under the orders of the Commissioner.

3. At present, there is no provision in the Bombay Abkari Act, 1878, under which the declaration as at page 9 can be legally called for from any person. When new section 35B of the Bill to amend the Bombay Abkari Act, 1878, becomes law it will be legally feasible to call for such a declaration.

Sd.-

D.V.VAS

O.c. Remembrancer of Legal Affairs.

U.O.R. to R.D. No. 1565 dated the 15th February 1947.

K.N.P.
16/5
A.C.

GOVERNMENT OF BOMBAY.

REVENUE DEPARTMENT.

Resolution No.3404/39.

Bombay Castle, 4th March 1947.

Letter from the Commissioner of Excise, No.51-21/47, dated 14th January 1947.

"In continuation of my Confidential letter No.51-21/47, dated 10th January 1947 I submit herewith a draft notification under section 17 of the Bombay Abkari Act, 1878, prescribing with effect from 1st April 1947 the limit of retail sale of foreign liquor in the Province of Bombay. In this connection I invite attention to paragraph 17 of my letter No. 25-30/46, dated 9th December 1946 in which I have pointed out the necessity of restricting the possession of foreign liquor whether imported from outside or manufactured in India and the basis on which such restriction can be effected. However, as suggested therein the Remembrancer of Legal Affairs might be consulted regarding the legality of the proposed measure. As the limit of retail sale under section 17 will be the limit of possession under section 14(b), no separate notification under the latter section is necessary.

"2. I have purposely suggested that the restriction on the retail sale and possession of foreign liquor should be imposed with effect from 1st April 1947 because under the existing conditions of the license which is valid up to 31st March 1947, the holder of a foreign liquor 'off' license can sell foreign liquor without any restriction on quantity. If the sale is restricted during the currency of the present license, the licensees might raise objection on the ground that their sales are affected and that the contract (for a license is nothing else but a contract between Government and the party concerned) has been violated by Government. They might also claim compensation for the loss that they might suffer on account of the imposition of restriction on sale. Moreover sudden imposition of such a restriction might put the public to inconvenience and would evoke severe criticism. The work in respect of the verification of the stocks in excess of the prescribed limit declared by non-licensees will also be heavy for which a large staff may have to be entertained. It is therefore advisable to give notice sufficiently in advance to the public regarding proposed restriction so as to enable them to abide by the restriction in due course with the least possible inconvenience. For all these reasons I propose that the retail sale of foreign liquor should be restricted with effect from 1st April 1947.

"3. It is however likely that in spite of the notice given in advance there might be cases in which the possessor of a large stock of foreign liquor would not be able to dispose of his stock in excess of the prescribed limit of possession by 1st April 1947. In such cases the declaration of such a stock would be imperative. Accordingly I submit herewith for the approval of Government a form of declaration in which the possessor would give details of the stock. He also state the manner in which he desires to dispose of the excess stock. I also append hereto a form of permit for the possession of foreign liquor in excess of the limit of possession subject to certain conditions under which it may be allowed to be kept. I request that the Remembrancer of Legal Affairs may be consulted as to whether these forms are suitable and can be prescribed under the provisions of the Bombay Abkari Act and whether the conditions mentioned therein can be legally imposed having regard to the proposed amendments to the Bombay Abkari."

Memorandum from the Remembrancer of Legal Affairs, No.1565, dated 15 February 1947.

RESOLUTION -In the circumstances reported Government agrees with the Commissioner of Excise that it necessary to restrict the limit of retail sale of foreign liquor in pursuance of the prohibition programme in the Province of Bombay. The requisite notification under section 17 of the Bombay Abkari Act, 1878, submitted by the Commissioner of Excise and revised by the Remembrancer of Legal Affairs should be published in the Bombay Government Gazette.

By order of the Governor of Bombay,

J.G.SINGH.

The Commissioner of Excise,
The Commissioners of Divisions;
All Collectors and the Collector of Bombay
The Commissioner of Public, Bombay
The Inspector General of Police
All Deputy Inspectors General of Police,
All District Superintendents of Police,
The Deputy Commissioner of Police (Prohibition), Bombay,
The Chief Presidency Magistrate, Bombay
The Remembrancer of Legal Affairs,
The Political and Services Department,
The Home Department,
The Finance Department,
The Director of Publicity (for issue of Press Note, copy enclosed),
The Resident for Kolhapur and the Deccan States,
The Honourable the Resident at Baroda and for the States of Western In
and Gujarat.

1*Printed as an accompanijent to this Government Resolutior

With copies of the notification.

By letter.

Accompaniment to Government Resolution Revenue Department No. 340/39, dated the 4th March 1947.

NOTIFICATION
REVENUE DEPARTMENT.

Bombay Castle, 4th March 1947.

No.340/39.-In exercise of the powers conferred by section 17 of the Bombay Abkari Act, 1878 (Bom V of 1878), the Government of Bombay is pleased to amend with effect from the 1st day of April 1947, Government Notification in the Revenue Department, No.3404/39 (a) dated the 10th July 1941, as follows, namely :-

In the schedule appended to the said notification after entry No.4 the following entry shall be inserted, namely :-

5.	(i) Brandy Whisky. Rum. Gin.	... In the Province of Bombay	..	One imperial gallon or one reputed quart bottled. in aggregate.
	(ii) Rectified spirt	.. Do	do	... One-sixth of an imperial gallon or one reputed quart bottle.
	(iii) Wines	... Do	do	.... One-half of an imperial gallon or three reputed quart bottle in aggregate
	(iv) Fermented foreign	.. Do	do	... Two imperial gallons or twelve reputed quart bottles in aggregate.

By order of the Governor of Bombay,

J.G.SIMMS,
Secretary to Government.

No. of 1947.

Copy forwarded for information and guidance to

K.N.F.
16/5
A.G.

Office of the R.L.A.

In place of the proposed draft notification at page 3, a revised draft thereof is sent herewith.

Sd.-

D.V.VAS

o.s. Remembrancer of Legal Affairs.

U.R.to R.D., No. 3199, dated the 2nd April 1947.

K.N.P.
16/5
4.C.

NOTIFICATION.

Revenue Department,

Bombay Castle, 1947.

Bombay Abkari Act, 1878.

No. In exercise of the powers conferred by section 6 of the Bombay Abkari Act, 1878, (Bom. V of 1878), the Government of Bombay is pleased to amend Government Notification in the Revenue Department No.3562/39(c) dated the 20th January 1943, as follows, namely

In the said notification; (a) the word "and" occurring at the end of paragraph (1), (b) the whole of paragraph (2) beginning with the brackets, figure and words "(2) the persons mentioned" and ending withsthe words "of the said Schedule" and (c) the whole of "SCHEDULE B" appended thereto, shall be deleted.

By order of the Governor of Bombay,

Secretary to Government.

K.N.P.
16/5
4.C.

Office of the R.L.A.

Revised draft rules are sent herewith subject to the following observations -

(a) the rules are arranged according to sequence and are split up or combined wherever necessary.

(b) Rule 2, Definitions. - The definition of "Officer-in-charge", which term is often used in the rules, has been inserted on the lines of the definition of that term in the Bombay Wine Manufacturing Rules, 1946.

(c) Rules 3 and 4.- These two rules have been recast on the lines of rules 4 and 7 of the Bombay Wine Manufacturing Rules, 1946, respectively.

(d) The transpositions made are as shown below :-

Revised rule 6	corresponds to	R.D. draft sub-rules (i) and (ii) of rule 7.
" " 7	-do-	R.D. draft rule 6 and sub-rules (iii) and (iv) of rule 7.
" " 8	-do-	sub-rule (v) of rule 7.
" " 9	-do-	sub-rules (vi) (vii) and (viii) of rule 7.
Revised rule 10	corresponds to	16(3), (4) and (5)
Revised rule 11	corresponds to	R.D. draft rule 16(1)
" 12	-do-	16(2)
" 13	-do-	13
" 14	-do-	17
" 15	-do-	18
" 16	-do-	15
Revised rule 17	corresponds to	R.D. rule 12
" 18	-do-	8
" 19	-do-	9
" 20	-do-	10
" 21	-do-	11
" 22	-do-	14

(e) Condition 19 of Form A of License - This condition would be appropriate only where the licensee is an individual or firm but not where the licensee is a limited company. The footnote at the end of the Form makes it clear that it shoule not be inserted in the case of a limited company.

2 Sub-section (3) of section 35 of the Act provides that the power to make rules under this section shall be subject to condition of previous publication. Unless therefore the powers under the proviso to the sub-section (3) are intended to be reported to, rules require previous publication.

Sd.-
P.M.LAD.
29/5/47.

c.c. Remembrancer of Legal Affairs.

U.R. to R.D. No. 5727 dated the 31 lt May 1947.

K.N.P.
16/5
4.C.

Office of the R.L.A.

A revised draft Order in place of two draft notifications as at pages 3 and 5 ante is sent herewith.

2.Under section 12 of the Act, no intoxicants and no hemp exceeding such quantity as the Provincial Government may prescribe by notification in the Official Gazette either generally for the whole Province or specially for any local area shall be transported except under a pass. Under these provisions it will be first necessary to prescribe by notification the limit of quantity for the transport of which no pass is necessary. R.D. should therefore determine the quantity of foreign liquor for transport of which no pass will be necessary. Fees for a pass for the transport of foreign liquor exceeding the quantity prescribed under section 12 are leviable under section 30 of the Act, but under that section it is the Commissioner who has the power to issue directions for the levy of fees on passes by Rules or Orders made either generally or in particular instance in that behalf. All that is necessary in this case is for the Commissioner to issue an order directing what fees shlild be levied on passes for the transport of liquor. It is not necessary to provide as proposed in the draft notifications that no foreign liquor shall be removed from one place to another except under a pass, for such a provision exists already in section 12 of the Act,

3. The draft notifications at pages 3 and 5 ante provide that a pass for the transport of foreign liquor shall be issued on certain conditions only to a person holding either (a) a trade and import licence, or (b) a special import licence, or (c) a special authorisation from the Collector. In the absence of any provision similar to clause (g) of sub-section (2) of section 35 or clause (1) of section 64 A, It will not be open to the Commissioner of Excise to prescribe the person or class of persons to whom a pass

may or may not be granted. (see R.L.A'S opinion No. 4542, dated 19-5-1941). The provisions in the R.D. notification directing that the pass shall be issued only to particular persons has therefore been omitted from the revised draft.

4. Para. 2 of the R.D. draft notification exempts from the requirement of a pass for foreign liquor up to a certain limit brought by a passenger or imported into the Province for personal use. It is doubtful whether such a provision would be legal. Under section 12 a pass is necessary for the transport of all intoxicants exceeding the prescribed quantity. A provision exempting foreign liquor up to certain quantity and brought into the Province for a particular purpose from the requirement of a pass is likely to be considered as being outside the scope of section 12. Para. 2 of the R.D. draft notification has, therefore, been omitted from the revised draft.

5. R.D. is requested to verify if the revised draft notffication is suitable and carries out its intentions.

Sd-
D.V.VAS

o.c. Remembrancer of Legal Affairs.

U.R. to R.D., No. 7841 dated the 29th July 1947.

K.N.P.
[illegible]5
4.C.

ORDER.

Bombay Abkari Act. 1878.

No., In exercise of the powers conferred by section 30 of the Bombay Abkari Act, 1878 (Bom. 1 of 1878), the Commissioner of Excise, Bombay, is pleased to make the following order, namely :-

1. Every pass granted under the said Act for the transport of foreign liquor specified in the Schedule appended hereto and transported from any port, Customs House, Land Customs Station or distillery in the Province, or from the boundaries thereof, to any place within the Province shall be granted on payment of a fee at the following rates, namely :-

(a) when the liquor is in bottle --

Rs.	as.	p.	
1	8	0	per dozen quart bottled of spirits, other than rectified spirit or absolute alcohol.
1	0	0	per proof gallon (six quart bottles) of rectified spirit or absolute alcohol.
0	12	0	per dozen quart bottles of wine.
0	6	0	per dozen quart bottles of beer or fermented liquors.

(b) when the liquor is in the wood --

Rs.	as.	p.	
1	0	0	per proof gallon of spirits
0	6	0	per bulk gallon of wines.
0	3	0	per bulk gallon of beer or fermented liquors.

2. The fee shall be paid before a pass is granted :

Provided that such fee may be paid in the case of persons holding a trade andimport license or a special import license before ..... of every month on the quantity of foreign liquor transported during the previous month, and in the case of Government Departments or institutions, by book adjustment.

Schedule.

(1) foreign liquor imported at the port of Bombay or imported into the Province of Bombay from other parts of British India or from Indian States;

(2) foreign liquor , manufactured in the Province of Bombay, or manufactured in other parts of British India or in Indian States and imported into the Province of Bombay on which duty is payable at the rates prescribed for such liquors in the First Schedule to Act XXXII of 1934; and

(3) foreign liquor imported into the Province of Bombay via the following Land Customs stations on the Goa and Daman Frontiers and on the Viramgaon Land Customs Line.

Goa Frontier	Daman Frontier.	Viramgaon Land Customs Line.
1. Chorla	1. Challa Custom	1. Viramgaon Custom House.
2. Talewadi	2. Kunta Naka.	2. Ranpur Naka.
3. Anmond.	3. Kalai Naka	3. Kundli Naka
4. Castle Rock.	4. Kolak Naka.	4. Salingpur Naka.
5. Diggi.	5. Patharpunja Naka	5. Dhandhuka Custom House.
6. Poy.	6. Bagawada Naka	6. Gundi Naka.
7. Majali.	7.	7. Bagodra Naka.
		8. Shahapur Naka.
		9. Thori Naka.
		10. Goria Naka.
		11. Patri Naka.

Commissioner of Excise, Bombay.

Bombay dated the 1947.

K.N.P.
16/5
4.C.

Office of the R.L.A.

The first question referred to the R.L.A. for consideration is whether there is any objection to issuing a fresh notification under section 12 of the Bombay Abkari Act, 1878, in supersession of the existing notification No. 3968 dated the 27th July 1922. As already pointed out in para. 3 of R.L.A's opinion No. 2642 dated the 5th April 1945, the present purpose is to give an added concession to certain States in respect of carriage "by the Ceded railway lands" particularly with reference to foreign liquor. The existing notification refers to carriage not merely by rail but also by road, river, sea etc. and therefore to save confusion it would be desirable to preseve the existing notification which gives a right to transport also by road, river, sea etc. and issue a fresh notification as already proposed giving a right to transport only through the lands occupied by the specified railways.

2. The second question is whether it is necessary to amend rule 9 of the Bombay Dangerous Drugs Import and Export (Indian States) Rules, 1940. Since as pointed out by the R.L.A. on his opinion referred to above the transport of ganja, bhang and charas within the Province is governed by the Bombay Abkari Act, 1878, it not be necessary to amend the rule for the object in view.

Sd.-

D.V.VAS.

o.c. Remembrancer of Legal Affairs.

U.R. to R.D. No. 7901 dated the 31st July 1947.

K.N.P.
16/5
4.C.